

ACRO370 ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 1990 000007.60
OPER: MAL CASE ACTION SUMMARY RUN DATE: 01/18/2006
PAGE: 1 CIRCUIT CRIMINAL
===== IN THE CIRCUIT COURT OF RANDOLPH JUDGE: XXX

STATE OF ALABAMA VS ALLS BILLY GAY
CASE: CC 1990 000007.60 EASTERLING CF7A-130
200 WALLACE DR CLIO, AL 36017 0000

DOB: 08/08/1954 SEX: M RACE: B HT: 0 00 WT: 000 HR: EYES:

SSN: 420707082 ALIAS NAMES:
=====

CHARGE01: RULE 32-FELONY CODE01: RULE LIT: RULE 32-FELONY TYP: F #: 001
OFFENSE DATE: AGENCY/OFFICER: 0560000

DATE WAR/CAP ISS:	DATE ARRESTED:
DATE INDICTED:	DATE FILED: 04/11/2005
DATE RELEASED:	DATE HEARING:
BOND AMOUNT:	SURETIES:
	\$ 00

DATE 1: DESC: TIME: 0000
DATE 2: DESC: TIME: 0000

TRACKING NOS :

1

DEF/ATY: **TYPE:** **TYPE:**

PROSECUTOR: JONES E PAUL

TRANS DATE	ACTIONS, JUDGEMENTS, AND NOTES	OPE
04/11/2005	CHARGE 01: RULE 32-FELONY/#CNTS: 001 (AR01)	MAL
04/11/2005	FILED ON: 04/11/2005 (AR01)	MAL
04/29/2005	ORDER ALLOWING DEFENDANT TO PROCEED IN FORMA	MAL
04/29/2005	PAUPERIS	MAL
06/02/2005	PETITION THIS COURT FOR AN ORDER FOR THE	MAL
06/02/2005	STATE TO RESPOND	MAL
06/14/2005	MOTION FOR FINAL DISPOSITION	MAL
07/12/2005	MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS	MAL
07/12/2005	MOTION FOR IMPOSITION OF SANCTION FOR A VIOLATION	MAL
07/12/2005	OF RULE OF CRIMINAL PROCEDURE RULE 32.7(A)	MAL
07/12/2005	MOTION FOR MORE DEFINILE STATEMENT OF APRIL 26TH	MAL
07/12/2005	2005	MAL
07/12/2005	MOTION FOR DE NOVO HEARING	MAL
09/07/2005	PETITION FOR AN WRIT OF MANDAMUS	MAL
09/07/2005	ORDER FROM COURT OF CRIMINAL APPEALS	MAL
09/13/2005	MANDAMUS CERTIFICATE OF SERVICE	MAL
09/15/2005	PETITION FOR AN WRIT OF MANDAMUS	MAL

EXHIBIT

DENGAD 800-531-6989

**PETITION FOR RELIEF FROM
CONVICTION OR SENTENCE**

(Pursuant to Rule 32,
Alabama Rules of Criminal Procedure)

Case Number
CC- 90 808
ID YR. NUMBER

IN THE CIRCUIT COURT OF Randolph County, ALABAMA

Billy Gay Ais vs. STATE OF ALABAMA

Petitioner (Full Name)

Respondent

[Indicate either the "State" or,
if filed in municipal court, the
name of the "Municipality"]

Prison Number

AIS 161437

Place of Confinement

Easterling C.F.
CLIO, ALA.

County of conviction

Filed in Office

APR 11 2005

NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY
THE ACCOMPANYING INSTRUCTIONS.

KIM S. BENEFIELD
Clerk of Circuit Court

1. Name and location (city and county) of court which entered the judgment of conviction or sentence under attack Randolph County Alabama Circuit Court
2. Date of judgment of conviction 2-4-1991
3. Length of sentence Two Life Sentence Consecutively
4. Nature of offense involved (all counts) one count of MURDER
one count of Robbery
5. What was your plea? (Check one)
 - (a) Guilty
 - (b) Not guilty
 - (c) Not guilty by reason of mental disease or defect
 - (d) Not guilty and not guilty by reason of mental disease or defect

6. Kind of trial: (Check one)

(a) Jury _____ (b) Judge only

7. Did you testify at the trial?

Yes _____ No

8. Did you appeal from the judgment of conviction?

Yes _____ No

9. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court _____ *N/A*(2) Result _____ *N/A*(3) Date of result _____ *N/A*

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court _____ *N/A*(2) Result _____ *N/A*(3) Date of result _____ *N/A*

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court _____ *N/A*(2) Result _____ *N/A*(3) Date of result _____ *N/A*

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes No _____

11. If your answer to Question 10 was "yes", then give the following information in regard to the first such petition, application, or motion you filed:

(a) (1) Name of court CIRCUIT COURT OF RANDOLPH COUNTY ALABAMA

(2) Nature of proceeding MOTION FOR DISCOVERY

(3) Grounds raised _____

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application, or motion, give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

N/A

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No _____

(5) Result _____

(6) Date of result _____

N/A

(c) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

(1) Name of court _____

N/A

(3) Grounds raised _____

N/A

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No _____

(5) Result _____

N/A

(6) Date of result _____

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc. Yes No _____

(2) Second petition, etc. Yes _____ No _____

(3) Third petition, etc. Yes _____ No _____

ATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION
FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.

(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:

ALABAMA SUPReMe told me to get me A LAWYER
to HANDLE my CASE12. Specify every ground on which you claim that you are being held unlawfully, by placing a checkmark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

GROUNDs OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

 A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

For your information, the following is a list of the most frequently raised claims of constitutional violation:

(1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(2) Conviction obtained by use of coerced confession.

(3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(5) Conviction obtained by a violation of the privilege against self-incrimination.

(6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(7) Conviction obtained by a violation of the protection against double jeopardy.

(8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

B. The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and

The facts are not merely cumulative to other facts that were known; and

The facts do not merely amount to impeachment evidence; and

If the facts had been known at the time of trial or sentencing, the result would probably have been different; and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:

"Successive Petitions." The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes _____ No _____

B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court Criminal Court of Appeal

(b) Result AFFIRMED

(c) Date of result _____
(attach additional sheets if necessary)

C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labeled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes _____ No ✓

15. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

(a) At preliminary hearing IT WAS WAVE

(b) At arraignment and plea Thomas Jane

(c) At trial NO TRIAL

(d) At sentencing NO [REDACTED] Sentencing hearing

(e) On appeal NO APPEAL

(f) In any post-conviction proceeding NO POST-Conviction

(g) On appeal from adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ✓ No _____

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes _____ No ✓

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) And give date and length of sentence to be served in the future: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ✓ No _____

18. What date is this petition being mailed?

To Be Added

Wherefore, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on

4-5-05

(Date)



Signature of Petitioner

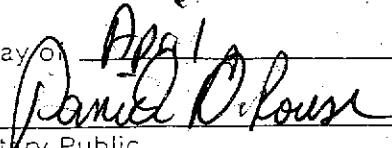
SWORN TO AND SUBSCRIBED before me this the

5

day of

Apr 1

2005



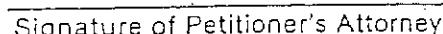
Notary Public

ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

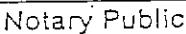
I swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true

and correct. Executed on

(Date)



Name and address of attorney representing petitioner
in this proceeding (if any)



Notary Public

* If petitioner is represented by counsel, Rule 32.6(a) permits either petitioner or counsel to verify the petition.

IN THE CIRCUIT COURT OF RANDOLPH COUNTY, ALABAMA

STATE OF ALABAMA

)

VS.

) CASE NO. CC-90-007

BILLY GAY ALLS

)

SENTENCING ORDER

The Defendant, Billy Gay Alls, and the attorneys for the Defendant, Honorable Thomas E. Jones and Honorable Donald R. Cleveland, being present in Court, made known the desire of the Defendant to plead guilty to the charges of murder and robbery in the first degree, which are lesser included offenses as those charged in the indictment. The Court was presented with a Plea Agreement executed by the Defendant, counsel for the Defendant, and the District Attorney. The Court then accepted the Plea Agreement submitted by the parties.

The Court conducted a full colloquy with the Defendant, advising him of his constitutional rights and being assured that the attorneys for the Defendant had likewise advised the Defendant of his constitutional rights. The Court further advised the Defendant that in the event his guilty plea is later successfully attacked on appeal, the State has the right to reindict the Defendant on the capital murder charge and seek the death penalty following a trial. The Defendant waived all constitutional rights and requested that his plea of guilty be accepted.

The Court ascertained from the Defendant that there are sufficient facts on which to base the plea of guilty. The entire proceeding was recorded by the Court Reporter.

Based upon the Defendant's plea, the Court finds the Defendant, Billy Gay Alls, guilty of murder, which is a lesser included offense as charged in the indictment; and further finds the Defendant, Billy Gay Alls, guilty of robbery in the first degree, a lesser included offense as charged in the indictment.

EXHIBIT (C)

W COPY

The Court made the pronouncement of guilty, and the Defendant was afforded allocution.

It is the judgment and sentence of the Court that the Defendant, Billy Gay Alls, be and he is sentenced to the penitentiary of the State of Alabama in connection with the murder conviction for a life term. In connection with the robbery conviction, the Defendant is sentenced to the penitentiary of the State of Alabama for a life term. The sentences imposed in connection with these convictions are to run consecutively. The Defendant is to be given credit for time served in connection with these charges.

The Defendant is ordered to pay the costs of these proceedings, said costs to include the reimbursement to the State of Alabama for the costs of the Defendant's court-appointed counsel, and any medical and/or dental expenses incurred while incarcerated in the County Jail. IT IS FURTHER ORDERED that the Defendant pay the sum of \$50.00 to the Victim's Compensation Fund of the State of Alabama. Payment of all sums indicated above is a condition to any form of early release for the Defendant.

As per the Plea Agreement, any other offenses charged the indictment are dismissed. Further, as per the Plea Agreement, Case No. CC-90-008 is nolle prossed.

The Clerk of the Court is to mail a copy of this Sentencing Order to counsel of record for the Defendant and the Office of the District Attorney.

SIGNED this 4th day of February, 1991.


DALE SEGREST, Circuit Judge

FILED IN OFFICE

FEB - 1 1991

J. W. FIELD
Clerk of Circuit Court

EXHIBIT (B)

COPY

IN THE DISTRICT COURT OF RANDOLPH COUNTY, ALABAMA

STATE OF ALABAMA,)
)
 PLAINTIFF,)
)
 V.) CASE NO. CC 90-007
)
 BILLY ALLS,) RE: ALLS V. STATE
)
 DEFENDANT.) Filed In Office

ORDER

APR 2 2 1998

KIM S. BENEFIELD

Defendant has filed in this Court a motion to require the Department of Probation and Parole to furnish him with a copy of his pre-sentence investigation report, which may also assume that such a report is available in the office of the Clerk of this Court. The Clerk denies having such a report. This Court has examined the entire file relating to this case. This Court finds no such report.

The Court has examined the entire file in this matter. It appears that defendant was charged with capital murder and that at some point in time, the defendant, his counseis, and the State entered into a plea agreement as to lesser included offenses, which this Court accepted. He was sentenced in accordance with the plea agreement. There is no indication that a pre-sentence investigation report was ordered, was necessary, or would have been appropriate under the circumstances. The file indicates that he received a sentence of life without parole, by agreement. A pre-sentence investigation report would have added nothing

EXHIBIT (D)

11 COPY

or subtracted nothing from the agreement. All the necessary forms and colloquy appear in the file. The motion is due to be denied. IT IS SO ORDERED.

The Clerk shall mail a copy of this Order by ordinary mail to the defendant at his last known address and to the Assistant District Attorney for Randolph County.

DONE AND ORDERED this 22 ^{hand} day of April, 1998.


Lewis H. Hamner
Circuit Judge

EXHIBIT (E)